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Servicemembers Civil Relief Act

If you have been around the military for any length of time, you probably have heard of the Soldiers' and Sailors' Civil Relief Act (SSCRA). This decades-old federal law has been protecting our nation's servicemembers since World War I. Though it offers a range of important protections for military personnel, its precise scope and content are not widely understood. This article discusses the history of the original SSCRA and its most recent main protections added in 2003, when it was re-named the *Servicemembers Civil Relief Act* (SCRA).

History and Purpose.

The idea behind the SCRA is to strengthen our national defense by enabling military personnel to devote their energy to fighting and winning wars. To accomplish this, this act shields servicemembers from certain legal proceedings, tax burdens, and actions by creditors. This concept is nothing new: Congress has enacted various statutes prohibiting or limiting lawsuits against soldiers and sailors since the Civil War. During World War I, Congress passed the Soldiers and Sailors Civil Relief Act of 1918. In 1940 the law was completely rewritten, to expand legal protections to servicemembers. Experience during World War II and subsequent armed conflicts made certain changes in the statute necessary. The first of these amendments became law in 1942. In amending the Act, Congress was motivated, in part, by the desire to override court decisions that, in some instances, had lead to restrictive interpretations of the Act. The act went on to receive minor changes over the years.

In 2003, the Soldiers and Sailors Civil Relief Act was completely re-written, and re-named the *Servicemembers Civil Relief Act*. The bill was signed into law by President Bush on December 19, 2003. This is the law that now governs many legal protections for members of the United States Military.

Scope.

Reservists and members of the National Guard (when in active federal service) are also protected under the SSCRA. SSCRA (for all) begins on the first day of active duty, which means when the person ships out to basic training (Basic Training, and job-school are considered active duty for Guard and Reserve personnel, as well as active duty personnel). Some protections under the act extend for a limited time beyond active duty discharge or release but are tied to the discharge/release date. Additionally, some of the Act's protections extend to the members' dependents (e.g. Certain eviction actions).

National Guard members recalled for State duty are also protected by the Servicemember's Civil Relief Act in certain circumstances. National Guard members are entitled to SCRA protection when called to state active duty under Title 32, if the duty is because of a federal emergency, the request for active duty is made by the President or Secretary of Defense, and the member is activated for longer than 30 days. An example of this would be the National Guard members who were activated by the states, at the request of the President, to provide security for airports after 9-11.

Major Legal Protections

Termination of Residential Leases. The SCRA allows individuals to break a lease when they go onto active duty, if the lease was entered into before going onto active duty. Additionally, the act allows a servicemember to terminate a residential lease entered into while in the military, if the member receives permanent change of station (PCS) orders, or orders to deploy for a period of not less than 90 days.

This protection covers "lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose."

To break a lease under these provisions, the servicemember must make the request in writing, and must include a copy of their orders (orders placing them on active duty, PCS orders, or deployment orders). The member may deliver the notification by hand, by commercial carrier, or by mail (return receipt requested).

The termination date for a lease that requires monthly rent, the earliest termination date is 30 days after the first date on which the next payment is due, following proper notification of termination of lease. For example, if Sgt John pays his rent on the first of every month, and he notifies his landlord (and gives the landlord a copy of his orders), on the 18th of June, that he wishes to terminate the lease under the provisions of the SCRA, the earliest termination date 1 August (the next rent is due 1 July, and 30 days later is 1 August).

If it's some other arrangement, other than monthly rent, the earliest termination of the lease is the last day of the month, following the month in which the notice is given. So, if notice is given on 20 June, the earliest termination date would be 31 July.

A question often asked is, "What if there are other people on the lease? Who has to make up the rent?" Neither the landlord nor the servicemember. The SCRA is silent in this area. In most states, the burden would likely fall on the remaining roommates. They would either have to make up the military member's share of the rent, or find another roommate. The SCRA gives the military member the right to terminate his/her own portion of the lease early, but the law does not require the landlord to decrease the amount of total rent for the property, nor does the law protect remaining non-military roommates (unless, of course, they are the member's legal dependents).

These new protections will eliminate the former need for servicemembers to request that landlords add "Military Clauses" to their lease agreements. However, the act does not provide the ability to terminate a residential lease in the case of a servicemember being ordered to move into government quarters or upon the servicemember's retirement or release from active duty. If you are concerned about these two situations, you may consider including a "Military Clause" in your lease agreement.

Automobile Leases. Military members may also terminate automobile leases in certain circumstances. Just like with residential leases, if a member enters into an automobile lease before going on active duty, the member may request termination of the lease when he/she goes onto active duty. However, for this to apply, the active duty must be for at least 180 continuous days. So, if a person joined the Reserves, and had orders for basic training and technical school, the total of which was only 120 days, he/she could not terminate the automobile lease under this act.

Additionally, military members making a permanent change of station (PCS) move from CONUS to OCONUS, or who deploy for 180 days or longer may terminate such leases.

The act specifically covers "lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation."

To terminate the lease, the member must make the request in writing, along with a copy of orders. The member may deliver the notification by hand, by commercial carrier, or by mail (return receipt requested). Additionally, the member must then return the vehicle to the lessor within 15 days of delivery of the termination notice.

The lessor is prohibited from charging an early lease termination fee. However, any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

Evictions from leased housing. Servicemembers may seek protection from eviction under SCRA. The rented/leased property must be occupied by the servicemember or his/her dependents for the purpose of housing, and the rent can not exceed \$2,400 (for 2004 -- the actual amount is automatically adjusted each year, by the inflation rate). The servicemember or dependent who has received notice of an eviction must submit a request to the court for protection under the SCRA. If the court finds that the servicemember's military duties have materially affected his ability to pay his rent timely, the judge may order a stay, postponement, of the eviction proceeding for up to 3 months or make any other "just" order.

6% Interest Rate /Installment Contracts. The SCRA gives certain protections against repossessions for installment contracts (including automobile leases). If the contract was entered into before going on active duty and at least one payment was made before that time, the creditor cannot repossess the property, while

the member is on active duty, nor can they terminate the contract for breach, without a court order. If a servicemember's military obligation has affected his/her ability to pay on financial obligations such as credit cards, loans, mortgages, etc., the servicemember can have his/her interest rate capped at 6% for the duration of the servicemember's military obligation.

Qualifying debts are debts that were incurred by the servicemember, or the servicemember and their spouse, jointly, before coming on active duty. Debts entered into after going on active duty are not so protected.

Notice that this particular provision of the act only applies if a servicemember's military service affects their ability to pay. However, the burden is on the creditor to seek relief in court if the creditor believes that the servicemember's military career does not materially affect his/her ability to pay. The creditor must comply, unless he/she gets a court-order stating otherwise.

In order for an obligation or liability of a servicemember to be subject to the interest rate limitation, the servicemember must provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

Upon receipt of notice, the creditor must reduce the interest rate to a maximum of 6 percent, effective the first day of active duty (even if the servicemember makes the request at a later time).

The law unambiguously states that no interest above 6 percent can accrue for credit obligations while on active duty (for debts incurred before going onto active duty), nor can that excess interest become due once the servicemember leaves active duty (that was a "trick" some creditors tried under the old law) – instead that portion above 6 percent is permanently forgiven. Furthermore, the monthly payment must be reduced by the amount of interest saved during the covered period.

Court Proceedings. If a servicemember is a defendant in a civil court proceeding, the court may (note the word "may"), on its own motion, grant a 90-day stay (delay) in the proceedings. If the servicemember asks for a stay, the court *must* grant a minimum 90 day stay, if:

1. The servicemember submits a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; and
2. The servicemember submits a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

The provision applies to civil lawsuits, suits for paternity, child custody suits, and bankruptcy debtor/creditor meetings, and administrative proceedings.

The new act specifically states that a servicemember communicating with the court requesting a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction). Under the old act, some courts held that merely communicating with the court (i.e., requesting a stay, implied that the member agreed to jurisdiction of the court).

A servicemember who is granted a stay may request an additional stay, if he/she can show that military requirements affect his/her ability to appear (commander's letter is also needed). However, the court is not obligated to grant the additional stay.

If the court refuses to grant an additional stay of proceedings, the court must appoint counsel to represent the servicemember in the action or proceeding.

If a default judgment is entered in a civil action against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment must, upon application by or on behalf of the servicemember, reopen the

judgment for the purpose of allowing the servicemember to defend the action if it appears that--

1. the servicemember was materially affected by reason of that military service in making a defense to the action; and

2. the servicemember has a meritorious or legal defense to the action or some part of it.

Enforcement of Obligations, Liabilities, Taxes. A servicemember or dependent may, at any time during his/her military service, or within 6 months thereafter, apply to a court for relief of any obligation or liability incurred by the servicemember or dependent prior to active duty or in respect to any tax or assessment whether falling during or prior to the servicemember's active military service. The court may grant stays of enforcement during which time no fine or penalty can accrue.

Additionally, the act prevents servicemembers from a form of double taxation that can occur when they have a spouse who works and is taxed in a state other than the state in which they maintain their permanent legal residence. The law prevents states from using the income earned by a servicemember in determining the spouse's tax rate when they do not maintain their permanent legal residence in that state.

Reemployment Rights. Contrary to what many people believe, there are no provisions for Reemployment Rights as part of the Soldiers and Sailors Civil Relief Act. Reemployment rights are addressed in completely different legislation, The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA).

Life Insurance Protection. The SCRA also permits the servicemember to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all the premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Servicemembers Group Life Insurance.

Health Insurance Reinstatement. The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of the Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a servicemember entitled to participate in employer-offered insurance. And, finally, the servicemember must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always, submit the request to the insurance company in writing with a copy of the orders for active duty and release from active duty.

Invoking the SCRA. The SCRA can be extraordinarily helpful to our nation's servicemembers. As with any statute, however, it should be invoked and relied upon only after consultation with an attorney. This article has set forth some of the main protections afforded under the Act but provision discussed herein may or may not apply to your circumstances. In addition, other statutes and judicial decisions not discussed in this article might affect how the SCRA applies in certain situations. The purpose of this article is not to give legal advice, but to educate servicemembers about the wealth of protections offered by this important statute. If you feel that you might benefit from any of the SCRA's protections, please visit your legal assistance office or other attorney.

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